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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MARLON H. CRYER, individually and on behalf of a class of all others similarly situated, and on behalf of the Franklin Templeton 401(k) Retirement Plan,

Plaintiffs.

V.

FRANKLIN RESOURCES, INC., the Franklin Templeton 401(k) Retirement Plan Investment Committee, and DOES 1-25,

Defendants.

Lead Case No. 4:16-cv-04265-CW
[Consolidated with Case No. 4:17-cv-06409-CW]

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

FINAL APPROVAL ORDER AND JUDGMENT

Judge: Hon. Claudia Wilken

1 **JUDGMENT APPROVING SETTLEMENT OF CLASS ACTION**

2 WHEREAS, Marlon Cryer and Nelly Fernandez (the “Plaintiffs”) in the above-captioned
 3 consolidated litigation (the “Action”) on their own behalf and on behalf of the Class and the Plan,
 4 on the one hand, and Defendants Franklin Resources, Inc., the Franklin Templeton 401(k)
 5 Retirement Plan Investment Committee, the Franklin Templeton 401(k) Retirement Plan
 6 Administrative Committee, Norman Frisbie, Jennifer Johnson, Penelope Alexander, Kenneth
 7 Lewis, Dan Carr, Nicole Smith, Alison Baur, Madison Gulley (erroneously sued as Matthew
 8 Gulley), the Franklin Resources, Inc. Board of Directors, Gregory E. Johnson, Rupert H. Johnson,
 9 Jr., Charles B. Johnson, Charles E. Johnson, Peter K. Barker, Mariann Byerwalter, Mark C.
 10 Pigott, Chutta Ratnathicam, Laura Stein, Seth Waugh, Geoffrey Y. Yang, Samuel Armacost,
 11 Joseph Hardiman, and Anne Tatlock (the “Defendants”), on the other hand, have entered into a
 12 Settlement Agreement and Release dated February 15, 2019, (the “Agreement”), that provides for
 13 a complete dismissal with prejudice of all claims asserted in the Action against Defendants by the
 14 Class on the terms and conditions set forth in the Agreement, subject to the approval of this Court
 15 (the “Settlement”);

16 WHEREAS, the capitalized terms not defined in this Final Approval Order and Judgment
 17 shall have the same meaning ascribed to them in Part I of the Agreement;

18 WHEREAS, by Order dated June 3, 2019, (the “Preliminary Approval Order”), this Court
 19 (1) preliminarily approved the Settlement; (2) appointed a Settlement Administrator; (3) directed
 20 notice be given to the Class and approved the form and manner of Notice; (4) approved the Plan
 21 of Allocation; (5) scheduled a Final Approval Hearing; and (6) scheduled a hearing on Class
 22 Counsel’s Fee and Expense Application and Plaintiffs’ request for Case Contribution Awards;

23 WHEREAS, due and adequate notice has been given to the Class;

1 WHEREAS, the Court conducted a hearing on September 24, 2019, (the “Final Approval
 2 Hearing”) to consider, among other things, (1) whether the proposed Settlement on the terms and
 3 conditions provided for in the Agreement is fair, reasonable, adequate, and in the best interests of
 4 the Class and should be finally approved by the Court; (2) whether Class Counsel’s Fee and
 5 Expense Application is reasonable and should be approved; (3) whether Plaintiffs’ request for
 6 Case Contribution Awards is reasonable and should be approved; and (4) whether this Final
 7 Approval Order and Judgment should be entered dismissing with prejudice all claims asserted in
 8 the Action against Defendants; and

10 WHEREAS, the Court having reviewed and considered the Agreement, all papers filed
 11 and proceedings held herein in this Action in connection with the Settlement, all oral and written
 12 comments received regarding the Settlement, and the record in the Action, and good cause
 13 appearing therefor;

15 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

16 1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and
 17 all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and
 18 each of the Class Members.

19 2. **Incorporation of Settlement Documents:** This Final Approval Order and
 20 Judgment incorporates and makes a part hereof: (a) the Agreement filed with the Court on
 21 February 15, 2019, including the Plan of Allocation submitted therewith; and (b) the Notice
 22 approved by the Court on June 3, 2019.

24 3. **Notice:** The Court finds that the dissemination of the Notice: (a) was
 25 implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice
 26 reasonably practicable under the circumstances; (c) constituted notice that was reasonably
 27 calculated, under the circumstances, to apprise all Class Members of the pendency of the Action,
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1 of the effect of the Settlement (including the releases provided for therein), of their right to object
 2 to the Settlement and appear at the Final Approval Hearing, of Class Counsel's Fee and Expense
 3 Application, and of Plaintiffs' request for Case Contribution Awards; (d) constituted due,
 4 adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed
 5 Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure,
 6 the United States Constitution including the Due Process Clause, and all other applicable law and
 7 rules.

8 4. **Objections:** No objections have been made to the Settlement.

9 5. **Final Settlement Approval:** Pursuant to, and in accordance with, Rule 23 of the
 10 Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set
 11 forth in the Agreement in all respects including, without limitation, the terms of the Settlement;
 12 the releases provided for therein; and the dismissal with prejudice of the claims asserted in the
 13 Action, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the
 14 best interests of Plaintiffs and the Class. The Parties are directed to implement, perform and
 15 consummate the Settlement in accordance with the terms and provisions of the Agreement.

16 6. **Dismissal of Claims:** As of the Effective Date, pursuant to Fed. R. Civ. P. 54(b),
 17 all of the claims asserted in this Action against Defendants are hereby dismissed with prejudice.
 18 The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the
 19 Agreement.

20 7. **Binding Effect:** The terms of the Agreement and of this Final Approval Order
 21 and Judgment shall be forever binding on Defendants, Plaintiffs, and all Class Members, as well
 22 as their respective current and former beneficiaries, heirs, descendants, dependents,
 23 administrators, executors, representatives, predecessors, successors, and assigns.

1 8. **Releases:** The releases set forth in the Agreement (the “Releases”), are expressly
 2 incorporated herein in all respects. The Releases are effective as of the date of the entry of this
 3 Final Approval Order and Judgment. Accordingly, the Court orders that, as of that date:

4 a) Plaintiffs and each Class Member (on behalf of themselves, their current
 5 and former beneficiaries, heirs, descendants, dependents, administrators, executors,
 6 representatives, predecessors, successors, and assigns), and the Plan (by and through the
 7 Independent Fiduciary), shall be deemed to have, and by operation of law and of this Final
 8 Approval Order and Judgment shall have, fully, finally and forever compromised, settled,
 9 released, resolved, relinquished, waived, discharged, and dismissed with prejudice all Released
 10 Claims, including any and all claims for monetary, injunctive, and all other relief against the
 11 Defendant Released Parties through the date the Court enters the Final Approval Order and
 12 Judgment (including, without limitation, any Unknown Claims) arising out of or in any way
 13 related to: (a) the conduct alleged in the *Cryer* and *Fernandez* operative Complaints, whether or
 14 not included as counts in the Complaints; (b) the selection, retention and monitoring of the Plan’s
 15 investment options and service providers; (c) the performance, fees and other characteristics of
 16 the Plan’s investment options; (d) the Plan’s fees and expenses, including without limitation, its
 17 recordkeeping fees; (e) the nomination, appointment, retention, monitoring and removal of the
 18 Plan’s fiduciaries; and (f) the approval by the Independent Fiduciary of the Settlement, and shall
 19 forever be enjoined from prosecuting any or all of the Released Claims, including any or all
 20 Unknown Claims, against the Defendant Released Parties, as more fully set forth in the
 21 Settlement Agreement; and

22 b) The Company (on behalf of itself and any successors-in-interest) shall be
 23 deemed to have, and by operation of law and of this Judgment shall have fully, finally, and
 24 forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of
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1 Plaintiff, the Plan, the Class, and Class Counsel from any and all actual or potential claims,
 2 actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether
 3 under local, state or federal law, whether by statute, contract, common law or equity, whether
 4 brought in an individual, representative or any other capacity, whether known or unknown,
 5 suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent,
 6 liquidated or unliquidated, relating to the pursuit of the Action, as more fully set forth in the
 7 Settlement Agreement.

9 9. **Rule 11 Findings:** The Court finds and concludes that the Parties and their
 10 respective counsel have complied in all respects with the requirements of Rule 11 of the Federal
 11 Rules of Civil Procedure in connection with the commencement, maintenance, prosecution,
 12 defense and settlement of the claims asserted in the Action.
 13

14 10. **No Admissions:** This Final Approval Order and Judgment, the Preliminary
 15 Approval Order, the Agreement (whether or not consummated), including the exhibits thereto and
 16 the Plan of Allocation contained therein (or any other plan of allocation that may be agreed-upon
 17 by the Parties or approved by the Court), the negotiations that led to the agreement-in-principle
 18 reached by the Parties on December 3, 2018, the negotiation of the Agreement and its exhibits,
 19 and any papers submitted in support of approval of the Settlement, and any proceedings taken
 20 pursuant to or in connection with the Agreement or approval of the Settlement, including any
 21 arguments proffered in connection therewith: (a) shall not give rise to any inference of, and shall
 22 not be construed or used as an admission, concession, or declaration against any of the Defendant
 23 Released Parties of wrongdoing or liability in the Action or any other proceeding; (b) are not an
 24 admission of any liability of any kind, whether legal or factual; (c) shall not be used or received in
 25 evidence in any action or proceeding for any purpose, except in an action or proceeding to
 26 enforce the Agreement, whether affirmatively or defensively; (d) shall not be construed or used as
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1 an admission, concession, or declaration by or against Plaintiffs, the Plan, or the Class that their
 2 claims lack merit or that the relief requested in the Action is inappropriate, improper or
 3 unavailable; and (e) shall not be construed or used as an admission, concession, declaration or
 4 waiver by any Party of any arguments, defenses, or claims he, she, or it may have in the event that
 5 the Agreement is terminated. This Order and the Agreement and any proceedings taken pursuant
 6 to the Agreement are for settlement purposes only.

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8 11. **Retention of Jurisdiction:** Without affecting the finality of this Final Approval
 9 Order and Judgment in any way, this Court retains continuing and exclusive jurisdiction over:
 10 (a) the Parties for purposes of the administration, interpretation, implementation and enforcement
 11 of the Settlement; (b) the disposition of the Settlement Fund; (c) Class Counsel's Fee and
 12 Expense Application and Plaintiffs' request for Case Contribution Awards; and (d) the Class
 13 Members for all matters relating to the Action.

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15 12. **Fees and Awards:** A separate order shall be entered on Class Counsel's Fee and
 16 Expense Application and Plaintiffs' request for Case Contribution Awards. Such order shall in no
 17 way affect or delay the finality of this Final Approval Order and Judgment and shall not affect or
 18 delay the Effective Date of the Settlement.

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20 13. **Modification of Settlement Agreement:** Without further approval from the
 21 Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or
 22 modifications of the Agreement or any exhibits attached thereto to effectuate this Settlement that:
 23 (a) are not materially inconsistent with this Final Approval Order and Judgment; and (b) do not
 24 materially limit the rights of Class Members in connection with the Settlement.

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26 14. **Termination:** If the Settlement does not go into effect or is terminated as
 27 provided for in the Agreement, then this Final Approval Order and Judgment (and any orders of

the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Agreement.

15. **Entry of Final Judgment:** There is no just reason to delay entry of this Final Approval Order and Judgment as a final judgment with respect to the claims asserted in the Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this Final Approval Order and Judgment pursuant to Fed. R. Civ. P. 54(b) as against Defendants.

SO ORDERED this 4 day of October, 2019.

Chadwick

The Honorable Claudia A. Wilken
United States District Judge